

REMARKS

In the Office Action mailed January 8, 2008 the Examiner noted that claims 1-11 were pending and rejected claims 1-11. Claims 1, 2 and 9-11 have been amended, no claims have been canceled, claim 12-14 have been added and, thus, in view of the foregoing claims 1-14 remain pending for reconsideration which is requested. No new matter has been added. The Office's rejections and objections are traversed below.

OBJECTIONS

The Specification is objected to for incorrect use of grammar. The Specification has been amended to fix issues regarding the plurality of words and tense.

Claims 1 and 9 stand objected to for informalities. Claims 1 and 9 have been amended.

Withdrawal of the objections is respectfully requested.

REJECTIONS under 35 U.S.C. § 112

Claims 1-11 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. In particular the Office points out several antecedent basis issues in the claims. The Applicant has amended the claims.

The Applicant respectfully disagrees that claim 9 is indefinite. Claim 9 requires a server to store an advertisement information and an identification information for identifying a

plurality of pieces of partial software of predetermined software ... select at least one of the identification information for specifying the plurality of pieces of partial software corresponding to the advertisement information upon accessing the advertisement information; and ... deliver the accessed advertisement information and the selected at least one of the identification information. As claim 9 stores, selects and delivers it is therefore definite.

Withdrawal of the rejections is respectfully requested.

REJECTIONS under 35 U.S.C. § 101

Claims 8, 10 and 11 stands rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In particular, the Office asserts that the claims recite a data structure not embodied in a computer-readable storage media.

The Applicant has amended the claims to recite that the structure is stored in a memory, a hardware component. Support for the amendment may be found in the paragraph beginning at page 12, line 10 and the paragraph beginning at page 20, line 14 of the Specification. The Applicants submits that no new matter has been added by the amendment of claims 8, 10 and 11.

MPEP 2601(IV)(B)(2)(a) states "[i]f a claim defines a useful machine or manufacture by identifying the physical structure of the machine or manufacture in terms of its hardware or hardware and software combination, it defines a statutory product. See, e.g., *Lowry*, 32 F.3d at 1583, 32 USPQ2d at 1034-35;

Warmerdam, 33 F.3d at 1361-62, 31 USPQ2d at 1760." The claims each define both hardware (e.g. a memory) and software and are therefore statutory.

REJECTIONS under 35 U.S.C. § 102

Claims 1-4 and 6-11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kutaragi, U.S. Patent Publication No. 2002/0004743 A1. The Applicant respectfully disagree and traverse the rejection with an argument.

Kutaragi discusses the insertion of advertising reference data into the contents of games prior to the distribution of the game. This is in contrast to the present claims that encourage a user to view an advertisement and be rewarded with a piece of a software executable until they have received the entire software executable.

On page 5 of the Office Action, it is asserted that Kutaragi ¶ 0010 lines 4-5 disclose "means for storing an advertisement information and a plurality of pieces of partial software of predetermined software," as in amended claim 1. Kutaragi ¶ 0010 lines 4-5 states "a first server storing a plurality of digital contents to be provided." Nothing in Kutaragi discusses that a plurality of pieces of partial software of predetermined software are stored. Figs. 3A and 6 indicate that the software in Kutaragi is not broken up into a plurality of pieces. DEMONSTRATION GAME PROGRAM 22 in Fig. 3A is shown as a discrete element, not broken into plurality of pieces.

Kutaragi Fig. 6, PROGRAM 32 is also discrete element, not broken into a plurality of pieces.

On page 5 of the Office Action, it is asserted that Kutaragi ¶ 0010 lines 9-11 disclose "means for selecting at least one of the plurality of pieces of partial software corresponding to upon accessing the advertisement information," as in amended claim 1. As discussed above, Kutaragi does not deliver the program (i.e. software) in separate pieces. Therefore, Kutaragi does not need to select a portion of the plurality of pieces of software for delivery. Further, the cited text does not state that a portion of a program is selected, only that a specific digital content of an entire specific content as in Fig. 6 is downloaded.

On page 5 of the Office Action, it is asserted that Kutaragi ¶ 0010 lines 12-14 disclose "means for delivering the accessed advertisement information and the selected at least one of the plurality of pieces of partial software," as in amended claim 1. Again, Kutaragi fails to disclose a plurality of pieces of software.

On page 6 of the Office Action, it is asserted that Kutaragi ¶ 0046 lines 10-13 disclose "a software storage section configured to, each time the wireless terminal receives the advertisement information from the advertisement delivery server and the selected at least one of the plurality of pieces of partial software, sequentially store the received at least one of

the plurality of pieces of partial software," as in amended claim

1. Kutaragi ¶ 0046 lines 10-13 states

Game data G1 through Gn containing advertisement programs AP1 through APn as shown in FIG. 6 respectively are each stored in the main data storage 14. The other user terminals 9-2 through 9-N are of the same configuration.

Thus, advertisement programs AP1 through APn are discrete pieces of information. But, Kutaragi ¶ 0047 states

As shown in FIG. 6, the sets of game data G1 through Gn are each made up of a header 30 of contents providing company name, title, date of sale, etc., and movie data 31, program data 32, object data 33, multiple sets of texture data 34, advertising program data AP, and so forth. Here, the program data is not a demonstration program like the advertisement structure information, but is an authentic program intended for sale. Also, with regard to the **advertising program data**, advertisement information is obtained from the advertising agency server 5 based on the embedded above information indicating that **advertisements may be inserted, and the advertisement information is displayed in the game.** [Emphasis added]

Thus, what is discussed in AP1-APn is advertising program data, which is not software, but an indication that an advertisement can be inserted into a game.

On page 6 of the Office Action, it is asserted that Kutaragi claim 11, lines 3-5 discloses "a software linking means for linking the plurality of pieces of partial software stored in said software storage section to form executable software," as in amended claim 1. As discussed above, the program in Kutaragi is not broken into separate pieces, therefore there is no need to link it back together at the wireless terminal. Kutaragi claim 11 states "said digital contents data contains advertisement

programs, with said advertisement information being set into said digital contents by **said advertisement programs**" (emphasis added).

The Applicant disagrees that an advertisement program as in Kutaragi is a software program. Even if Applicant was to accept that interpretation, claim 11 make clear that what AP1-Apn would represent a plurality of separate programs, not a program broken into a plurality of pieces. Therefore, Kutaragi does not disclose "a software linking means for linking the plurality of pieces of partial software stored in said software storage section to form executable software."

Claims 2 and 7-11 recite features similar to those found in claim 1. Therefore, for at least the reasons stated above, claims 1, 2 and 7-11 and the claim dependent therefrom are patentably distinguishable from Kutaragi.

REJECTIONS under 35 U.S.C. § 103

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being obvious over Kutaragi in view of Dujari, U.S. Patent No. 6,199,107. The Applicant respectfully disagrees and traverses the rejection with an argument. Dujari adds nothing to deficiencies of Kutaragi as applied to the independent claims. Therefore, Kutaragi and Dujar, taken separately or in combination, fail to render obvious the features of claim 5.

NEW CLAIMS

Claims 12-14 are new. Support for claims 12 and 13 may be found in the paragraph beginning on page 14, line 11 of the Specification. Support for claim 14 may be found in the paragraph beginning at page 14, line 31 of the Specification. It is respectfully submitted that no new matter has been added by the addition of claims 12-14. The prior art fails to disclose the plurality of pieces of partial software comprise a single software program divided into a plurality of pieces. The prior art also fails to disclose each piece of the plurality of pieces of partial software is received at the wireless terminal in response to a request to view an advertisement.

SUMMARY

It is submitted that the claims satisfy the requirements of 35 U.S.C. §§ 112, 101, 102 and 103. It is also submitted that claims 1-13 continue to be allowable. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

A handwritten signature in black ink, appearing to read 'James J. Livingston, Jr.', is written over a horizontal line.

James J. Livingston, Jr.
Reg. No. 55,394
209 Madison Street, Suite 500
Alexandria, VA 22314
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

JJL/lk